

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEITH W. SULLIVAN,

Plaintiff

v.

JAMES DZURENDA, et al.,

Defendants

Case No.: 2:23-cv-01730-APG-DJA

Dismissal Order

Plaintiff Keith Sullivan brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Southern Desert Correctional Center (“SDCC”). ECF No. 6 at 1. On April 23, 2024, the magistrate judge ordered Sullivan to update his address by May 23, 2024. ECF No. 8. That deadline expired without an updated address from Sullivan, and his mail from the court is being returned as undeliverable. *See* ECF No. 9. In addition, in the screening order I ordered Sullivan to file an amended complaint by May 21, 2024. ECF No. 5 at 7. I warned Sullivan that the action could be dismissed if he failed to file an amended complaint by that deadline. *Id.* That deadline expired, and Sullivan did not file an amended complaint, move for an extension, or otherwise respond.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*

1 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
2 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
3 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
4 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
6 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
7 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

8 The first two factors, the public’s interest in expeditiously resolving this litigation and the
9 court’s interest in managing its docket, weigh in favor of dismissal of Sullivan’s claims. The
10 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
11 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
12 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
13 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
14 greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires me to consider whether less drastic alternatives can be used to
16 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
17 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
18 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
19 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
20 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
21 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial
22 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
23 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before

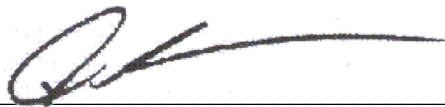
1 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
2 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
3 without the ability for the court and the defendants to send Sullivan case-related documents,
4 filings, and orders, the only alternative is to enter a second order setting another deadline. But
5 without an updated address, the likelihood that the second order would even reach Sullivan is
6 low, so issuing a second order will only delay the inevitable and further squander the court’s
7 finite resources. Setting another deadline is not a meaningful alternative given these
8 circumstances. So the fifth factor favors dismissal.

9 **II. Conclusion**

10 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
11 dismissal. It is therefore ordered that this action is dismissed without prejudice based on
12 Sullivan’s failure to file an updated address in compliance with this court’s April 23, 2024, order.
13 The Clerk of Court is directed to enter judgment accordingly and close this case. No other
14 documents may be filed in this now-closed case. If Sullivan wishes to pursue his claims, he must
15 file a complaint in a new case and provide the court with his current address.

16 Finally, I order that the applications to proceed *in forma pauperis* (ECF Nos. 1, 4) are
17 denied as moot.

18 Dated: May 29, 2024

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20 U.S. District Judge
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